(23)

13/11/07

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 361 of 2005

APPELLANT		Rajendra Kerketta
	Vs.	
RESPONDENT		State of Chhattisgarh

Judgment post for 12-11-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 361 of 2005

APPELLANTS Rajendra Kerketta, S/o Dhansai Ketketta, aged 31 years, resident of Village Kerju, P.S. AND Tahsil Sitapur, District Surguja (CG)

Vs.

RESPONDENT State of Chhattisgarh Through District Magistrate, Surguja (C.G.)

PRESENT: Smt. Indira Tripathi, Advocate for the appellant.
Smt. Madhunisha Singh, Panel Lawyer for the State.

J U D G M E N T
(12-11-2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentenced dated 7-3-2005 passed in S.T. No. 506/2004 whereby learned 4th Additional Sessions Judge, FTC, Ambikapur has convicted the appellant under Section 489 (B) of I.P.C. and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo R.I. for 5 months.

2. Case of the prosecution in brief is that on 24-8-2004 at about 18.30 hrs. the appellant and co-accused Virendra came in the shop of complainant Atul Lakda (P.W. 1) and gave currency note of Rs. 100/- for purchasing biscuit. On being told that the currency note appears to be fake, he started running away after taking out the note whereupon the complainant and other persons present in the shop apprehended him. The person who gave the note told his name Rajendra whereas the other persons was Virendra. The accused persons also stated that they have other 4 similar notes of 100/-. They were taken to the Police Station Seetapur and report was lodged and offence was registered under Section 489(B) read with Section 34 of I.P.C. During investigation, 4 currency notes of 100 denomination were seized on the memorandum of appellant. The seized notes were sent for examination to the Branch Manager, Central Bank of India and thereafter the Reserve Bank of India confirmed that the notes were fake. The notes were also sent for examination to the Currency Note Press, Nasik Road. After completing investigation, charge sheet was filed against the appellant and co-accused Virendra.

3. During trial, the prosecution examined 5 witnesses and thereafter statement of accused was recorded in which the appellant denied the circumstances appearing against him and pleaded innocence and false implication. However the trial Court by the impugned judgment convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that the complainant has not supported the case of the prosecution. He has stated that Rajendra did not tell the police about possessing fake notes and the police had seized two currency notes of 100 each from his possession vide seizure memo of Ex. P-3. He has denied that the appellant gave any information about possessing more fake currency notes. The other witness of memorandum of seizure P.W. 2 Amar Lakda has also not supported the prosecution case as he has also stated that only two fake currency notes of 100 were seized from the appellant. He has denied that the appellant gave any statement to the police regarding possessing fake currency notes and the conviction is based on statement of the Investigating Officer P.W. 4 B.B.S. Rajput. Reliance is place in the matter of **Umashanker –v- State of Chhattisgarh**[1] and **Gaffoor –v- State of Kerala**[2].

5. On the other hand, learned counsel for the State has supported the impugned judgment.

6. I have heard learned counsel for the parties.

7. Conviction is based on statement of Atul Lakda (P.W.1), Amar Lakra (P.W. 2) and Jarifullah Ansari (P.W. 3). The complainant Atul Lakda (P.W. 1) has deposed that on the date of incident, he was sitting in his provision store, at that time Rajendra came and asked for Parle G biscuit and gave a currency note of 100 which appeared to be fake currency note. When he told Rajendra about the same, he started running. At that time, Amar Lakda (P.W. 2) and Jarufullah Ansari (P.W. 3) were also sitting in the shop and they caught Rajendra. They took Rajendra to Seetapur police station and lodged report of Ex. P-1. However he denied the presence of co-accused Virendra at the time of incident. He has admitted his signature on memo of Ex. P-2 and admitted that accused Rajendra was interrogated by the police and who stated that he was possessing

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[1] 2001 CRI.L.J. 4696
[2] 1988(1) Short Note page 73

fake currency note and the police seized one fake currency note from him. However, he has further stated that the appellant Rajendra did disclose about having fake currency note in his presence. He has admitted his signature on the seizure memo of Ex. P-3 and Ex. P-4 by which 4 currency notes of 100 were seized from him. He has been declared hostile. In the cross-examination also he has denied having mentioned the name of co-accused Virendra but he has stuck to his allegation about accused Rajendra. He has insisted that only two notes were seized from Rajendra in his presence. In the cross-examination on behalf of the appellant, he has stuck to his examination-in-chief. Similar is the statement of Amar Lakda (P.W. 2). He has stated that he was sitting in the shop of complainant when the complainant asked him and Jarifullah to apprehend the appellant as he was possessing fake currency note whereupon they apprehended Rajendra. This witness has also admitted his signature in memo of Ex. P-2 and seizure memo of Ex. P-3 and P-4. He has been declared hostile. However, in the cross-examination also he has stated that the seizure memo of Ex. P-3 and P-4 pertain to seizure from appellant Rajendra, however he has denied that 4 currency notes were seized from the appellant. Jarifullah (P.W. 3) has also stated that the accused gave fake note of 100 to the complainant for purchasing biscuit. The complainant after discovery that the note is fake, asked them to apprehend Rajendra whereupon they apprehended Rajendra.

8. Investigating officer P.W. 4 B.B.S. Rajput, Sub Inspector of Police has proved the memorandum of Ex. P-2 wherein the appellant disclosed that he was possessing 4 currency notes of 100 each and 4 currency notes he has kept in his home in the box, on the basis of disclosure statement, 4 currency notes were seized from him vide Ex. P-4. The memorandum and seizure were affected in presence of witnesses. He had sought opinion of the Bank Manager of Central Bank of India, Fatahpur vide his memo dated 21-4-2004 of Ex. P-6. Seized currency notes were sent to Currency Note Press, Nasik Road, Maharashtra and after receiving the report from the Press, charge sheet was filed.

9. P.W. 5 Pradeep Kumar Mishra, Branch manager of Central Bank of India has stated that the notes sent by S.H.O. Seetapur were prima facie found to be fake however he advised the S.H.O. to send

the notes for confirmation to Reserve Bank of India. The report of Currency Note Press, Nasik Road dated 7-2-2005 mentions that the currency notes 8 in number referred by the Superintendent of Police, Ambikapur were examined. They were received on sealed condition. After examination, the same were found to be counterfeit notes.

10. In the matters of **Gaffoor**[2] it has been held that for conviction under Section 489(B) and 489(C) for possessing or using counterfeit currency note, the prosecution has not only to establish the possession of the counterfeit note from the accused persons but it is also the requirement of law that the accused must have knowledge or reason to believe that the notes are forged or counterfeit. However it has been held that no direct evidence for the proof of knowledge is necessary and the circumstances leading to seizure of the fake note, the manner in which the accused came into possession of these notes may be considered for recording a finding about the knowledge or otherwise.

11. In the matter of **Umashanker**[1] also it has been held that buying or receiving from another person or otherwise trafficking in or using as genuine or also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under S. 489(C) in the absence of the mens rea i.e. knowledge or having reason to believe that the currency notes or bank notes are fake or counterfeit.

12. From the evidence of P.W. 1 Atul Lakda, it would be evident that when he pointed out to the accused Rajendra that the note which he had tendered was fake, he started running away from his shop, however he was apprehended by him and two others. His version is duly corroborated from the statement of Amar Lakda who has stated that the complainant told them to catch hold of the appellant as he was possessing fake currency note, thereafter they apprehended him. P.W. 4 the Investigating Officer has proved the seizure memo of Ex. P-3 by which 4 fake currency notes of 100 each were taken into possession on being produced by the appellant. He has further proved the memo of Ex. P-2 wherein the appellant gave information of possessing more such notes and on the basis of discovery memo of Ex. P-2, 4 currency notes were taken into possession from the house of the appellant. Though the prosecution witnesses including the complainant and Atul Lakda and Amar

Lakda who are signatories of the memo and seizure memorandums have denied that the appellant gave any information about possessing fake currency notes however they have not disputed their signatures in the documents and they have also admitted that appellant Rajendra was interrogated by the police. Therefore the version of the Investigating Officer is corroborated to certain extent by the statement of these two witnesses. So far as the question of mens-rea i.e. knowledge of the appellant that he was possessing fake currency notes with an intention to use the same as genuine is concerned, it can be gathered from his conduct because as soon as he was apprised by the complainant that the note tendered by him is fake, he started running from the shop and subsequently on the basis of his memorandum that he is having more fake currency notes which he has kept in his box in his home, 4 fake currency notes were recovered from him. It has not been disputed by the appellant that the currency notes allegedly seized vide seizure memo of Ex. P-3 and P-4 have been ultimately found to be fake on examination. Therefore, in the considered opinion of this Court, the prosecution has been able to establish the charge against the appellant beyond reasonable doubt that the appellant possessed fake currency notes with full knowledge that the currency notes were fake and the trial Court has not committed any illegality or infirmity in convicting the appellant by the impugned order.

13. In the result, the appeal being devoid of substances is liable to be and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge